

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EDWARD LEE SMITH,

Petitioner,

vs.

GLEN WHORTON, et al.,

Respondents.

Case No. 2:06-CV-00291-RLH-(RJJ)

**ORDER**

Petitioner filed a Notice of Appeal (#43) from the denial of his Amended Petition for a Writ of Habeas Corpus. See Order (#41). The Court directed Petitioner to file an application to proceed in forma pauperis on appeal. See Order (#45). Petitioner has never filed any application.

To appeal the denial of a petition for a writ of habeas corpus, Petitioner must obtain a certificate of appealability, after making a “substantial showing of the denial of a constitutional right.” 28 U.S.C. §2253(c).


Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy §2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. The issue becomes somewhat more complicated where, as here, the district court dismisses the petition based on procedural grounds. We hold as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner’s underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

1 Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also James v. Giles, 221 F.3d 1074, 1077-79 (9th  
2 Cir. 2000).

3           Petitioner has made no such showing because he has not applied for a certificate of  
4 appealability. The Court has reviewed its Order (#41) denying the Amended Petition for a Writ of  
5 Habeas Corpus (#24). It does not find any issues upon which reasonable jurists might debate.

6           IT IS THEREFORE ORDERED that a certificate of appealability is **DENIED**.

7           DATED: February 9, 2009.

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12 ROGER L. HUNT  
13 Chief United States District Judge  
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